



May 18, 2000

Ms. S. Michelle Allen
Associate General Counsel
University of North Texas
P.O. Box 310907
Denton, Texas 76203-0907

OR2000-1973

Dear Ms. Allen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 135883.

The University of North Texas (the "university") received a request for a copy of an e-mail submitted by a faculty member in the History Department to the History Academic Review Team. You ask for a decision from this office as to whether the requested e-mail implicates the faculty member's privacy interest such that it must be withheld from public disclosure under the Public Information Act. The university takes no position as to whether the e-mail must be kept confidential; however, in accordance with section 552.305 of the Government Code, the university has notified the faculty member of his right to submit reasons why the e-mail should be withheld from disclosure. *See* Gov't Code § 552.305(d) (providing that if release of a third party's private information may be subject to exception under section 552.101, a governmental body must make a good faith effort to notify that party of its right to submit reasons why such information should be withheld from disclosure); Open Records Decision No. 542 at 2-3 (1990) (determining that statutory predecessor to Gov't Code § 552.305 permitted governmental body to rely on interested third party to raise and explain applicability of exception to disclosure in certain circumstances). The faculty member responded to your notice by asserting that the submitted e-mail is confidential based on a right of privacy, which is encompassed by section 552.101 of the Government Code. We have considered the exception claimed and reviewed the submitted information.

Section 552.101 protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information protected by the

common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information if it is highly intimate or embarrassing such that its release would be highly objectionable to a reasonable person *and* the public has no legitimate interest in it. *Id.*

In this instance, the requested e-mail contains information about a public employee's job performance, and as such cannot be deemed outside the realm of public interest. *See* Open Records Decision Nos. 470 (1987) (public employee's job performance generally not private), 455 (1987) (public employee's job performance or abilities generally not protected by privacy), 444 (1986) (public has legitimate interest in knowing reasons for dismissal, demotion, promotion, or resignation of public employees), 438 (1986) (common law right of privacy does not protect facts about a public employee's misconduct on the job or complaints made about his performance), 423 (1984) (scope of public employee privacy is narrow), 329 (1982) (reasons for employee's resignation are not ordinarily excepted by constitutional or common law privacy), 208 (1978) (disciplinary action against public employee available to public). Therefore, based on our review of the information, we conclude that the requested e-mail is not protected from disclosure under section 552.101 in conjunction with the common law right to privacy. The university must release the requested e-mail to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report

that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Kathryn S. Knechtel
Assistant Attorney General
Open Records Division

KSK/ljp

Ref: ID# 135883

Encl. Submitted documents

cc: Mr. Richard M. Golden
Department of History
University of North Texas
Box 310650
Denton, Texas 76203-0650
(w/o enclosures)